

1        G. The information gathering abilities provided pursuant to  
2 this Section are in addition to, and not in lieu of, any rights  
3 of information gathering granted to EPA by statute.

4        H.1. Lockheed shall provide the following data to the City  
5 at the same time that Lockheed is required to provide such infor-  
6 mation to EPA:

7            a. Analytical sampling results received by Lockheed or  
8 its representatives on extraction wells supplying water to the  
9 groundwater Treatment Plant;

10           b. Analytical sampling results on groundwater Treat-  
11 ment Plant influent, effluent and internal intermediate processes  
12 taken by Lockheed or its representatives.

13        2. Lockheed shall provide the following information to the  
14 City within sixty (60) days of receipt of a written request from  
15 the City:

16           a. All groundwater Treatment Plant operating logs and  
17 summary management reports;

18           b. All reports and study results generated by Lockheed  
19 or its representatives pertaining to groundwater Treatment Plant  
20 efficiency or operations;

21           c. Any other information that Lockheed is required to  
22 submit to EPA pursuant to this Section for which Lockheed does  
23 not claim confidentiality pursuant to Section 104(e)(7), 42  
24 U.S.C. § 9604(e)(7).  
25  
26  
27

1 I.1. The City shall provide to Lockheed, at the same time  
2 that the City is required to provide such information to EPA,  
3 analytical sampling results on blending facility influents, ef-  
4 fluent and internal intermediate processes taken by the City or  
5 its representatives.

6 2. The City shall provide to Lockheed, within sixty (60)  
7 days of a written request from Lockheed, any other information  
8 that the City is required to submit to EPA pursuant to this Sec-  
9 tion for which the City does not claim confidentiality pursuant  
10 to Section 104(e)(7), 42 U.S.C. § 9604(e)(7).

11 3. Twenty days after the end of each month in which the  
12 City draws upon the Lockheed Trust Fund account established pur-  
13 suant to Subpart H of Section XII (Financial Assurance and Trust  
14 Accounts), the City shall provide to Lockheed copies of the con-  
15 tractor invoices and documentation of internal expenses for any  
16 costs incurred by the City during the prior month which the draw  
17 from the Lockheed Trust Fund was intended to reimburse.

18 XII. FINANCIAL ASSURANCE AND TRUST ACCOUNTS

19 A.1. Subject to the provisions of Subpart C of this Sec-  
20 tion, Lockheed shall demonstrate its ability to complete the Work  
21 and to pay all costs, penalties and interest for which Lockheed  
22 is or may become responsible under this Decree by obtaining, and  
23 presenting to EPA for approval within thirty (30) days after the  
24 effective date of this Decree, one of the following items for the  
25 amount of \$54,000,000.00:

- 26 a. Performance bond,  
27 b. Letter of credit, or

1                   c. Guarantee by a third party.

2           2. After Lockheed has been operating phase one for 18  
3 months, or on the date that EPA approves Lockheed's Remedial Ac-  
4 tion Work Plan for phase two, whichever is later, Lockheed may  
5 reduce the financial assurance provided pursuant to this Section  
6 to the amount of \$37,000,000.00.

7           3. After Lockheed has been operating phase two for 18  
8 months, or on the date that EPA approves Lockheed's Remedial Ac-  
9 tion Work Plan for phase three, whichever is later, Lockheed may  
10 reduce the financial assurance provided pursuant to this Section  
11 to the amount of \$23,000,000.00.

12          4. For purposes of this Section, "operation" of any phase  
13 shall be deemed to begin on the System Operation Date.

14          B. EPA may disapprove the financial assurance mechanism  
15 presented if, in EPA's determination, it does not provide ade-  
16 quate assurance that Lockheed is able to complete the Work. If  
17 Lockheed seeks to demonstrate its ability to complete the Work  
18 through a guarantee by a third party pursuant to Subpart A.3 of  
19 this Section, Lockheed shall demonstrate that the guarantor  
20 passes the financial test specified in 40 C.F.R. § 265.143(e).  
21 In determining whether or not such third party satisfies the  
22 criteria in 40 C.F.R. § 265.143(e), the amount required in Sub-  
23 part A of this Section shall be used in place of "the sum of the  
24 current closure and post-closure cost estimates and the current  
25 plugging and abandonment cost estimates," referred to in 40  
26 C.F.R. § 265.143(e).

1           C. In lieu of any of the three items listed in Subpart A  
2 above, Lockheed may present, for EPA's review and approval, in-  
3 ternal or public financial information sufficient to satisfy EPA  
4 that Lockheed has sufficient assets to make additional assurances  
5 unnecessary. EPA shall approve such financial assurance if EPA  
6 determines, based on the information submitted, that Lockheed has  
7 met the criteria in 40 C.F.R. § 265.143(e). In determining  
8 whether or not Lockheed has met these criteria, the amount re-  
9 quired in Subpart A of this Section shall be used in place of  
10 "the sum of the current closure and post-closure cost estimates  
11 and the current plugging and abandonment cost estimates," as  
12 referred to in 40 C.F.R. § 265.143(e). If Lockheed relies on in-  
13 ternal or public financial information for financial assurance,  
14 Lockheed shall submit such information on an annual basis until  
15 this Consent Decree is terminated pursuant to Section XXXIV  
16 (Termination and Satisfaction). If EPA determines the financial  
17 assurances to be inadequate based on its review of Lockheed's  
18 initial submittal or on review of any annual submittal, Lockheed  
19 shall obtain one of the three other financial instruments listed  
20 above in Subpart A of this Section, within thirty (30) days of  
21 receiving notice of such determination. If Lockheed disputes a  
22 determination by EPA that any financial assurance provided pur-  
23 suant to this Subpart C is inadequate, Lockheed shall maintain  
24 one of the three financial instruments listed in Subpart A during  
25 the pendency of the dispute.

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1       D. Within sixty (60) days of the effective date of this  
2       Consent Decree, Weber shall establish a trust fund (the "Weber  
3       Trust Fund") in the amount of Three Million Seven Hundred and  
4       Fifty Thousand Dollars (\$3,750,000.00). The instrument estab-  
5       lishing the Weber Trust Fund (the "Weber trust agreement") shall  
6       provide that Lockheed may draw upon the amount in the Weber Trust  
7       Fund to pay costs incurred in performing the Work that Lockheed  
8       has agreed to perform pursuant to Section VII (Work To Be  
9       Performed); provided, however, that if EPA takes over such Work,  
10      Lockheed may no longer draw upon the Weber Trust Fund and EPA  
11      may, instead, draw upon any amounts remaining in the Weber Trust  
12      Fund to reimburse the Superfund for amounts incurred in perform-  
13      ing such Work. Weber shall bear all costs related to the estab-  
14      lishment and maintenance of the Weber Trust Fund; provided,  
15      however, that Weber may use interest earned on the Weber Trust  
16      Fund to pay maintenance fees related to the Weber Trust Fund.  
17      Any additional interest shall be included in the Weber Trust Fund  
18      and drawn upon for performance of the Work by Lockheed or EPA.

19      E. Weber shall submit a signed copy of the Weber trust  
20      agreement to EPA and Lockheed within sixty-five (65) days of the  
21      effective date of the Consent Decree.

22      F. The Weber trust agreement shall require the trustee to  
23      provide a statement of the Weber Trust Fund account to EPA, Weber  
24      and Lockheed on the following schedule. The trustee shall submit  
25      its initial statement by the tenth day of the first calendar  
26      month after the first month in which either Lockheed or EPA draws  
27      upon the Weber Trust Fund. A statement shall be submitted to

1 EPA, Weber and Lockheed on the tenth day of the first calendar  
2 month after each month in which either Lockheed or EPA draws upon  
3 the Weber Trust Fund.

4 G. This Decree does not require Weber to perform any of the  
5 Work described in Section VII (Work To Be Performed), including  
6 any additions or changes to such Work. Pursuant to this Decree,  
7 Weber's sole responsibility for funding such Work is the obliga-  
8 tion to establish and fund the Weber Trust Fund described in Sub-  
9 parts D through F of this Section. The establishment and funding  
10 of such Weber Trust Fund shall entitle Weber to the covenant not  
11 to sue under Subpart A.2 of Section XVIII (Covenant Not To Sue).

12 H. Within sixty (60) days of the effective date of this  
13 Decree, Lockheed shall establish a trust fund (the "Lockheed  
14 Trust Fund" in the amount of Two Hundred Thousand Dollars  
15 (\$200,000.00). The instrument establishing the Lockheed Trust  
16 Fund (the "Lockheed trust agreement") shall provide that, upon  
17 submission to the trustee of an invoice with supporting documen-  
18 tation, the City may draw upon the amount in the Lockheed Trust  
19 Fund (up to \$200,000.00) to pay only those costs incurred by the  
20 City in designing and constructing the facilities necessary to  
21 transport treated groundwater from the Point of Delivery to the  
22 Valley Forebay Facility and necessary structural modifications  
23 and diffuser piping; provided, however, that if EPA takes over  
24 such Work, the City may no longer draw upon the Lockheed Trust  
25 Fund and EPA may, instead, draw upon any amounts remaining in the  
26 Lockheed Trust Fund (up to a total of \$200,00.00 drawn by the  
27 City and EPA) to reimburse the Superfund for amounts incurred in

1 performing such Work. Lockheed shall bear all costs related to  
2 the establishment and maintenance of the Lockheed Trust Fund and  
3 receive any interest that accrues pursuant to the Lockheed trust  
4 agreement.

5 I. Lockheed shall submit a signed copy of the Lockheed  
6 trust agreement to EPA and the City within sixty-five (65) days  
7 of the effective date of this Consent Decree.

8 J. The Lockheed trust agreement shall require the trustee  
9 to provide a statement of the Lockheed Trust Fund account to the  
10 City, Lockheed and EPA on the following schedule. The trustee  
11 shall submit its initial statement by the tenth day of the first  
12 calendar month after the first month in which either the City or  
13 EPA draws upon the Lockheed Trust Fund. A statement shall be  
14 submitted to EPA, the City and Lockheed on the tenth day of the  
15 first calendar month after each month in which either the City or  
16 EPA draws upon the Lockheed Trust Fund. The Lockheed Trust Fund  
17 shall be terminated upon EPA's approval of the City's Interim  
18 Remedial Action Report, as defined in the Statement of Work. If  
19 any portion of the \$200,000.00 principal remains in the Lockheed  
20 Trust Fund at the time of termination, such amount shall be  
21 returned to Lockheed.

22 XIII. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

23 A. All actions required to be taken pursuant to this Con-  
24 sent Decree shall be undertaken in accordance with the require-  
25 ments of all applicable local, state and federal laws and regula-  
26 tions, including CERCLA, as amended, and in accordance with the  
27 NCP, as amended, and the ROD (as modified by the ESD and Subpart

1 F of Section VII (Work To Be Performed)). Except as provided in  
2 Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), Lockheed  
3 shall obtain or cause its contractors to obtain all permits and  
4 approvals necessary under such laws and regulations for the Work  
5 it is required to perform. The City shall obtain or cause its  
6 contractors to obtain all permits and approvals necessary under  
7 such laws and regulations for the Work it is required to perform.

8 B. Each Settling Work Defendant shall include in all con-  
9 tracts or subcontracts into which it enters for the Work, provi-  
10 sions stating that the contractors or subcontractors, including  
11 their agents and employees, shall perform all activities required  
12 by such contracts or subcontracts in compliance with all ap-  
13 plicable laws and regulations.

14 C. This Consent Decree is not, nor shall it act as, nor is  
15 it intended by the Settling Parties to be, a permit issued pur-  
16 suant to any federal, state, or local statute or regulation.

17 D. All permits or other approvals required for the perfor-  
18 mance of the Work, including permits for any offsite disposal of  
19 hazardous substances, shall be identified in each Settling Work  
20 Defendant's Plan(s) for Satisfaction of Permitting Requirements,  
21 Final Remedial Design Report(s), and Final Remedial Action Work  
22 Plan(s), which are described in the Statement of Work.

23 E. Settling Work Defendants shall dispose of any materials  
24 taken off the Site in compliance with all applicable provisions  
25 of EPA's Revised Procedures for Implementing Off-Site Response  
26 Actions ("Off-Site Policy") (EPA OSWER Directive, 9834.11, Novem-  
27 ber 13, 1987).



1                   XIV. RETENTION OF RECORDS

2           A. Each Settling Work Defendant shall preserve and retain  
3 and shall instruct its contractors, subcontractors, and anyone  
4 else acting on its behalf to preserve and retain all records and  
5 documents (in the form of originals or exact copies or, in the  
6 alternative, in micrographic storage of all originals) in their  
7 possession or control developed in the course of performing the  
8 Remedial Action Work regardless of any document retention policy  
9 to the contrary, for five (5) years after certification of  
10 completion of the Work pursuant to Section XXXIV (Termination and  
11 Satisfaction). However, at any time during this five-year  
12 period, a Settling Work Defendant may deliver to the EPA Project  
13 Coordinator originals or copies of all non-privileged records and  
14 documents that it is required to preserve and retain under this  
15 Subpart A and thereby absolve itself of any further respon-  
16 sibility to preserve and retain such non-privileged records and  
17 documents. The obligation to preserve and retain any allegedly  
18 privileged documents shall remain until the end of the five (5)  
19 year period.

20           B. If a Settling Work Defendant asserts a privilege with  
21 respect to any document requested by EPA, it shall, upon request  
22 by EPA, provide an identification of such document by date,  
23 addressee(s) and addressor(s) and the basis for asserting  
24 privilege within twenty (20) days of the request by EPA. Set-  
25 tling Work Defendants may assert any privilege recognized by  
26 federal law. If a Settling Work Defendant decides to deliver to  
27 EPA all non-privileged documents pursuant to Subpart A of this

1 Section, that Settling Work Defendant shall also provide to EPA  
2 at that time a list of all documents which it is required to  
3 preserve and retain pursuant to Subpart A but which it is not  
4 turning over based on a claim of privilege. At EPA's request,  
5 that Settling Work Defendant shall identify each such document by  
6 date, addressee(s), and addressor(s) and shall provide the basis  
7 for asserting a privilege within twenty (20) days of the request  
8 by EPA. A Settling Work Defendant may assert any privilege  
9 recognized by federal law. If EPA disagrees with a Settling Work  
10 Defendant's characterization of a document as privileged, EPA may  
11 request that that Settling Work Defendant produce the document.  
12 The Settling Work Defendant(s) shall either comply with such re-  
13 quest or invoke the dispute resolution procedures of Section XX  
14 (Dispute Resolution).

15 XV. REIMBURSEMENT OF PAST COSTS

16 A. In full and complete settlement of Lockheed's liability  
17 to the United States for all Past Response Costs incurred by the  
18 United States with respect to the Site, Lockheed shall reimburse  
19 the Superfund in the amount of \$1,958,929.72. Lockheed shall,  
20 within thirty (30) days of the effective date of this Consent  
21 Decree, remit a certified or cashiers check for such amount to  
22 the address listed below:

23 U.S. Environmental Protection Agency, Region IX  
24 Superfund Accounting  
25 P. O. Box 360863M  
26 Pittsburgh, PA 15251  
27 Attention: Collection Officer for Superfund

1        B. Lockheed shall send a transmittal letter with the check  
2        described in Subpart A of this Section. The transmittal letter  
3        shall contain Lockheed's complete and correct address, the  
4        Operable Unit name, and the civil action number. Lockheed shall  
5        also state in the transmittal letter that \$124,307.44 of the  
6        funds are to be applied to site spill identifier ("SSID") #L6 and  
7        \$1,834,622.28 of the funds are to be applied to SSID #59.  
8        Lockheed shall send a copy of the transmittal letter and a copy  
9        of the check to the United States Department of Justice at the  
10       address indicated in Section XXIII (Form of Notice). Lockheed  
11       shall also send a copy of the check and a copy of the transmittal  
12       letter to the EPA Project Coordinator and the EPA Assistant  
13       Regional Counsel at the addresses listed in Section XXIII (Form  
14       of Notice). If Lockheed does not reimburse the Superfund in the  
15       amount specified in Subpart A of this Section within thirty (30)  
16       days of the effective date of this Consent Decree, then interest  
17       on the unpaid amount shall begin to accrue thirty (30) days after  
18       the effective date of this Consent Decree, at the rate specified  
19       in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

20        XVI. REIMBURSEMENT OF FUTURE RESPONSE COSTS

21        A. Lockheed agrees to reimburse the United States for any  
22        Future Response Costs which the United States (1) incurs in con-  
23        nection with the Site prior to the termination of this Consent  
24        Decree pursuant to Section XXXIV (Termination and Satisfaction)  
25        and (2) submits to Lockheed for payment pursuant to this Section.  
26        After this Decree becomes effective, EPA shall submit to  
27        Lockheed, no more frequently than annually, documentation of Fu-

1 Costs under both SSID #L6 and SSID #59 are included in EPA's  
2 documentation. With each check, Lockheed shall send a transmittal  
3 letter which shall include the correct name and address of  
4 Lockheed, the applicable site spill identifier number (SSID #L6  
5 or #59, as identified in EPA's cover letter), the Operable Unit  
6 name, and the civil action number. A copy of each such check and  
7 a copy of the transmittal letter shall be sent to the EPA Project  
8 Coordinator and to the United States Department of Justice, at  
9 the addresses set forth in Section XXIII (Form of Notice).

10 D. Checks should specifically reference the identity of the  
11 Site and be sent to:

12 U.S. Environmental Protection Agency  
13 Region IX  
14 Superfund Accounting  
15 P.O. Box 360863M  
16 Pittsburgh, PA 15251  
17 Attention: Collection Officer for Superfund

18 E. Payments made pursuant to this Section or Section XV  
19 (Reimbursement of Past Costs) shall not constitute an admission  
20 by Lockheed of any liability to the United States or any other  
21 person or entity.

22 XVII. RESERVATION AND WAIVER OF RIGHTS

23 A. The United States reserves the right to take any en-  
24 forcement action pursuant to CERCLA and/or any other legal  
25 authority, including the right to seek injunctive relief,  
26 monetary penalties, and punitive damages, for any civil or  
27 criminal violation of law or this Consent Decree, except that the  
United States agrees not to seek more than \$25,000 per day per  
violation in civil penalties, including stipulated penalties.